

112TH CONGRESS  
1ST SESSION

# S. 1725

To amend the Elementary and Secondary Education Act of 1965 regarding the accountability system for elementary and secondary schools, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 17, 2011

Ms. MURKOWSKI introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Elementary and Secondary Education Act of 1965 regarding the accountability system for elementary and secondary schools, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Educational Account-  
5 ability and State Flexibility Act”.

1 **SEC. 2. EDUCATIONAL ACCOUNTABILITY AND STATE FLEXI-**  
 2 **BILITY.**

3 Part A of title I of the Elementary and Secondary  
 4 Education Act of 1965 (20 U.S.C. 6311 et seq.) is amend-  
 5 ed by inserting after section 1116 the following:

6 **“SEC. 1116A. EDUCATIONAL ACCOUNTABILITY AND STATE**  
 7 **FLEXIBILITY.**

8 “(a) ESTABLISHMENT OF NEW STATE FLEXIBILITY  
 9 IN ACCOUNTABILITY REQUIREMENTS.—Beginning one  
 10 year after the date of enactment of the Educational Ac-  
 11 countability and State Flexibility Act, each State edu-  
 12 cational agency and local educational agency shall deter-  
 13 mine the performance of, and consequences for, the public  
 14 schools served under this part based on this section in-  
 15 stead of identification under paragraphs (1), (7), and (8)  
 16 of section 1116(b).

17 “(b) EVALUATION.—

18 “(1) IN GENERAL.—Each State educational  
 19 agency shall, for each year, conduct an audit and  
 20 evaluate a school’s performance for a school year to  
 21 determine the degree of need for improvement and  
 22 assign each school to a tier described in subsection  
 23 (c).

24 “(2) CONSIDERATIONS.—In determining the  
 25 proper tier for a school, the State educational agen-  
 26 cy shall consider, at a minimum—

1                   “(A) each school’s performance and  
 2                   progress toward making adequate yearly  
 3                   progress;

4                   “(B) student academic performance, as  
 5                   measured by the State academic assessment  
 6                   and other indicators described in the State and  
 7                   local plan; and

8                   “(C) student growth.

9           “(c) ACCOUNTABILITY TIERS.—Each State shall de-  
 10   velop an accountability system to evaluate schools that  
 11   consists of a series of tiers, each of which may be described  
 12   by a letter grade, and shall assign rational and appro-  
 13   priate consequences to each tier. The system shall include,  
 14   at a minimum, the following tiers and consequences for  
 15   each tier:

16           “(1) MAKING ADEQUATE YEARLY PROGRESS.—

17                   “(A) DESCRIPTION.—This tier shall in-  
 18                   clude each school in the State that is making  
 19                   adequate yearly progress for all categories de-  
 20                   scribed in section 1111(b)(2)(C)(v).

21                   “(B) CONSEQUENCE.—The State edu-  
 22                   cational agency shall provide a school in this  
 23                   tier with recognition and shall ensure that the  
 24                   school shares the school’s best practices with  
 25                   other schools.

1           “(2) NEARLY MAKING ADEQUATE YEARLY  
2           PROGRESS AND MAKING GROWTH.—

3           “(A) DESCRIPTION.—This tier shall in-  
4           clude each school in the State that—

5                   “(i) has not made adequate yearly  
6                   progress, due to not more than 2 of the  
7                   categories of students described in section  
8                   1111(b)(2)(C)(v)(II) or due to not achiev-  
9                   ing the required graduation rate by a small  
10                  margin; and

11                  “(ii) demonstrates that the school is  
12                  making growth with respect to such cat-  
13                  egories or graduation rate, as applicable,  
14                  such as by satisfying or substantially satis-  
15                  fying the safe harbor provisions of section  
16                  1111(b)(2)(I).

17           “(B) CONSEQUENCES.—The State edu-  
18           cational agency shall—

19                   “(i) provide each school in this tier  
20                   with recognition for the school’s successes  
21                   and growth;

22                   “(ii) require that, by not later than  
23                   the first day of the school year following  
24                   such identification, the local educational  
25                   agency shall provide supplemental edu-

1           cational services to students in such cat-  
 2           egories attending the school who are in any  
 3           of grades 3 through 12 and who did not  
 4           meet or exceed the proficient level on the  
 5           most recent State assessment in mathe-  
 6           matics or in reading or language arts, in  
 7           accordance with section 1116(e); and

8           “(iii) ensure that each school creates,  
 9           and submits for approval by the State edu-  
 10          cational agency, a research-based improve-  
 11          ment plan for the students in such cat-  
 12          egories attending the school who are in any  
 13          of grades 3 through 12 and who did not  
 14          meet or exceed the proficient level on the  
 15          most recent State assessment in mathe-  
 16          matics or in reading or language arts, or  
 17          for improving the graduation rate, as ap-  
 18          plicable, and implements the approved  
 19          plan.

20           “(3)   NOT    MAKING    ADEQUATE    YEARLY  
 21    PROGRESS FOR A SIGNIFICANT NUMBER OF CAT-  
 22    EGORIES.—

23           “(A) DESCRIPTION.—This tier shall in-  
 24          clude each school in the State that—

1 “(i) has not made adequate yearly  
2 progress for a significant number of cat-  
3 egories or has not achieved the required  
4 graduation rate; and

5 “(ii) is not showing enough growth in  
6 the academic indicators to provide reason-  
7 able confidence that the students are on  
8 track to be proficient by the time the stu-  
9 dents graduate secondary school or that  
10 the graduation rate will improve within a  
11 reasonable number of years to the required  
12 level.

13 “(B) CONSEQUENCES.—

14 “(i) RECOGNITION.—The State edu-  
15 cational agency shall ensure that each  
16 school in this tier receives recognition for  
17 what the school is doing well.

18 “(ii) IMPROVEMENT PLAN.—The local  
19 educational agency serving each school in  
20 this tier shall audit the policies and prac-  
21 tices of the school, as described in sub-  
22 section (d), and, based on the results, shall  
23 create, and submit to the State educational  
24 agency for approval, a research-based im-  
25 provement plan for the students in such

categories attending the school who are in any of grades 3 through 12 and who did not meet or exceed the proficient level on the most recent State assessment in mathematics or in reading or language arts, for improving the graduation rate in the school, or for the school as a whole, as appropriate, and implement the approved plan. A plan described in this clause shall include valid, reliable, evidence-based interventions and may be developed with the assistance of a nonprofit organization with demonstrated effectiveness in school improvement research or implementation.

“(iii) SUPPLEMENTAL EDUCATIONAL SERVICES.—The State educational agency shall require that the local educational agency provide supplemental educational services to students in such categories attending the school who are in any of grades 3 through 12 and who did not meet or exceed the proficient level on the most recent State assessment in mathematics or in reading or language arts, in accordance with section 1116(e).

1                   “(iv) TECHNICAL ASSISTANCE.—The  
 2                   State educational agency shall provide  
 3                   technical assistance, to the degree nec-  
 4                   essary as indicated by audit results under  
 5                   subsection (b), and may require the local  
 6                   educational agency to implement in the  
 7                   school specific and appropriate require-  
 8                   ments, in accordance with subsection (d).

9                   “(4) NOT MAKING ADEQUATE YEARLY  
 10                  PROGRESS FOR MULTIPLE YEARS.—

11                  “(A) DESCRIPTION.—This tier shall in-  
 12                  clude each school in the State that—

13                       “(i) has not made adequate yearly  
 14                       progress for a number of years due to—

15                               “(I) not meeting the adequate  
 16                               yearly progress targets for a number  
 17                               of categories described in section  
 18                               1111(b)(2)(C)(v)(II); or

19                               “(II) having a very low gradua-  
 20                               tion rate for a number of years; and

21                       “(ii) is not showing improvement.

22                  “(B) CONSEQUENCES.—

23                       “(i) AUDIT AND IMPLEMENTATION OF  
 24                       TURNAROUND MODEL OR SCHOOL IM-  
 25                       PROVEMENT STRATEGIES.—The State

1 shall conduct an in-depth audit of the  
2 school and shall require the local edu-  
3 cational agency to implement—

4 “(I) an alternative model of gov-  
5 ernance under section 1116(b)(8)(B);  
6 or

7 “(II) school improvement strate-  
8 gies based on a system of support  
9 model described in subsection (d).

10 “(ii) CONSULTATION.—A State edu-  
11 cational agency shall make the decision re-  
12 garding the appropriate models or strate-  
13 gies to be used in accordance with clause  
14 (i), but shall first consult with the local  
15 educational agency serving such school,  
16 educators, Indian tribes or tribal organiza-  
17 tions, and community members before  
18 making a final determination.

19 “(iii) NO FEDERAL INFLUENCE.—The  
20 Secretary shall not prioritize, incentivize,  
21 or require the use of, any particular meth-  
22 od of school turnaround or school improve-  
23 ment strategy.

24 “(iv) SUPPLEMENTAL EDUCATIONAL  
25 SERVICES.—The State educational agency

1 shall require that the local educational  
2 agency provide supplemental educational  
3 services to students attending the school  
4 who are enrolled in any of grades 3  
5 through 12 and who did not meet or ex-  
6 ceed the proficient level on the most recent  
7 State assessment in mathematics or in  
8 reading or language arts, in accordance  
9 with section 1116(e).

10 “(v) PUBLIC SCHOOL CHOICE.—

11 “(I) IN GENERAL.—Not later  
12 than the first day of the school year  
13 following a school’s classification in  
14 this tier, the local educational agency  
15 serving the school shall provide stu-  
16 dents in grades 3 through 12 who are  
17 enrolled in the school and who did not  
18 meet or exceed the proficient level on  
19 the most recent State assessment in  
20 mathematics or in reading or lan-  
21 guage arts with the option to transfer  
22 to another public school served by the  
23 local educational agency in accordance  
24 with subclause (II), which may in-  
25 clude a public charter school, that has

1 not been identified for school improve-  
2 ment under this paragraph, unless  
3 such an option is prohibited by State  
4 law. The local educational agency  
5 shall provide, or shall pay for the pro-  
6 vision of, transportation for the stu-  
7 dent to the public school the student  
8 attends.

9 “(II) TRANSFER.—Students who  
10 use the option to transfer under this  
11 clause shall be enrolled in classes and  
12 other activities in the public school to  
13 which the students transfer in the  
14 same manner as all other children at  
15 the public school.

16 “(III) SPECIAL RULES.—Not-  
17 withstanding the requirements of this  
18 clause, a local educational agency  
19 shall not be required to provide stu-  
20 dents with the option to transfer to a  
21 school under this subparagraph if  
22 doing so would expose students to un-  
23 safe or unreasonable transportation  
24 routes or means or if there is no high-  
25 er-performing school within the school

1 district that has the space or capacity  
2 to serve them.

3 “(vi) WITHHOLDING OF STATE OR  
4 FEDERAL FUNDS.—A State shall have full  
5 authority to mandate any necessary  
6 changes to a school in order to improve  
7 and to withhold Federal or State funding.

8 “(5) STATE DETERMINATIONS.—Any decisions  
9 about the number of categories of students or the  
10 number of years that are required for a particular  
11 tier shall be made by the State educational agency  
12 and not by the Secretary.

13 “(d) SYSTEM OF SUPPORT MODEL.—A system of  
14 support model described in this subsection provides  
15 aligned resources, information, tools, professional develop-  
16 ment, and technical assistance to assist local educational  
17 agencies and schools to improve within the following do-  
18 mains:

19 “(1) Curriculum (review and development,  
20 alignment with performance standards, and imple-  
21 mentation in classrooms).

22 “(2) Assessment (formative and summative  
23 data collection and review, alignment with cur-  
24 riculum and performance standards, use of data to  
25 guide instruction).

1           “(3) Instruction (applying multiple effective  
2 strategies, targeted additional services, alignment  
3 with performance standards).

4           “(4) Supportive learning environment (effective  
5 classroom management, maximizing instructional  
6 time, discipline or behavior plans, attendance, parent  
7 and community involvement, extended learning).

8           “(5) Professional development (job-embedded,  
9 results-oriented, data-driven mentoring).

10          “(6) Leadership, including—

11               “(A) developing and implementing effective  
12 improvement strategies;

13               “(B) curriculum aligned to performance  
14 standards;

15               “(C) parental and community engagement;

16               “(D) using data to oversee student  
17 progress;

18               “(E) teacher supervision, support, and  
19 evaluation, and collaboration; and

20               “(F) the school’s mission, vision, and  
21 goals.

22          “(e) STATE PLAN.—A State shall include a descrip-  
23 tion of the State’s multi-tiered system in the State plan  
24 under section 1111(a), and shall provide to the Secretary  
25 such information as the Secretary may reasonably require

1 relating to the system and the performance of the State's  
 2 schools in the system in the State's report under section  
 3 1111(h)(2). The Secretary shall have no authority to ap-  
 4 prove or disapprove the system under such plan.

5 “(f) FUNDS FOR TRANSPORTATION AND SUPPLE-  
 6 MENTAL EDUCATIONAL SERVICES.—

7 “(1) IN GENERAL.—A local educational agency  
 8 shall reserve from its allocation under subpart 2 to  
 9 provide transportation as required under subsection  
 10 (c)(4)(E) and to satisfy all requests for supple-  
 11 mental educational services under section 1116(e),  
 12 subject to paragraph (2).

13 “(2) UNUSED FUNDS.—Beginning 30 days  
 14 after the first day of a school year, a local edu-  
 15 cational agency may spend the amount reserved  
 16 under paragraph (1) for other purposes, if the local  
 17 educational agency certifies to the State educational  
 18 agency that all families of students eligible for trans-  
 19 portation under subsection (c)(4)(E), or supple-  
 20 mental educational services under section 1116(e),  
 21 have been notified of the opportunity and have been  
 22 provided with a reasonable period of time to change  
 23 schools or enroll in supplemental educational serv-  
 24 ices, as appropriate.

25 “(g) TRANSITION PROVISIONS.—

1           “(1) INAPPLICABILITY OF CERTAIN PROVISIONS  
 2           OF SECTION 1116(b).—Beginning on and after the  
 3           date of enactment of the Educational Accountability  
 4           and State Flexibility Act, a State or local edu-  
 5           cational agency shall not be required to identify a  
 6           school under paragraph (1), (7), or (8) of section  
 7           1116(b). Any reference in any other section of this  
 8           Act to an identification under any such paragraph  
 9           shall be deemed to refer to the appropriate tier of  
 10          the State’s multi-tiered system described in sub-  
 11          section (c).

12           “(2) REGULATIONS.—The Secretary shall issue  
 13           regulations to provide for the orderly transition from  
 14           the relevant provisions of section 1116 to the re-  
 15           quirements of this section.”.

16 **SEC. 3. SUPPLEMENTAL EDUCATIONAL SERVICES.**

17          Section 1116(e) of the Elementary and Secondary  
 18          Education Act of 1965 (20 U.S.C. 6316(e)) is amended—

19               (1) by redesignating paragraph (12) as para-  
 20               graph (13);

21               (2) by inserting after paragraph (11) the fol-  
 22               lowing:

23               “(12) ADDITIONAL RULES.—In addition to the  
 24               other requirements of this paragraph—

1           “(A) in order to provide services under this  
2 subsection to students in a school, a provider on  
3 the list of approved providers across the State  
4 must also have provided the State with evidence  
5 that the provider is successful at serving any  
6 category of students at the school that did not  
7 make adequate yearly progress for the pre-  
8 ceding year;

9           “(B) local educational agencies may nego-  
10 tiate performance-based contracts with pro-  
11 viders that facilitate greater control for the  
12 local educational agency regarding—

13               “(i) the hourly rates for the supple-  
14 mental educational services and the min-  
15 imum supplemental educational services  
16 hours provided;

17               “(ii) tutor qualifications and the cur-  
18 riculum to be provided, particularly for  
19 serving students who are limited English  
20 proficient and children with disabilities;  
21 and

22               “(iii) other programmatic and finan-  
23 cial management factors; and

24           “(C) State educational agencies shall en-  
25 courage local educational agencies to negotiate

1 contracts regarding the factors described in  
2 subparagraph (B).”; and  
3 (3) in paragraph (13)(A) (as redesignated by  
4 paragraph (1)), by inserting “, who is in any of  
5 grades 3 through 12 and who did not meet or exceed  
6 the proficient level on the most recent State assess-  
7 ment in mathematics or in reading or language  
8 arts” before the semicolon.

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